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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,296	01/24/2002	R. Eric Montgomery	04163-00139	9773

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EXAMINER

JAGOE, DONNA A

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 12/18/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/056,296

Applicant(s)

MONTGOMERY, R. ERIC

Examiner

Donna A. Jagoe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

**DETAILED ACTION**

***Claims 1-10 are presented for examination.***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Showa Denko KK JP 62096408 (AG).

The claims are drawn to a composition comprising ascorbyl 2 phosphate or a sodium or potassium salt thereof and further comprising calcium ions wherein the composition is mixed with saliva. The composition optionally includes one or more of an anticaries agent, tartar control agent, antimicrobial agent and a desensitizing agent and further comprising a polymer.

Showa Denko KK teach ascorbic acid phosphoric acid ester or its salt e.g. Na, K, Ca or Mg salt) in an oral composition to be used for alveolar pyorrhea, cleaning teeth, removing bad breath and washing the teeth. It is in compositions such as toothpaste, chewing gum and troches. It is not clear from the abstract provided that the agent contains all the optional agents of instant claim 8. It is clear that it is used orally in a composition and since these are usual agents in compositions such as toothpaste,

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instant claim 8 is included in the rejection. This can be amended with a more complete translation of the document.

2. Claims 1-4 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lion Corp. JP 8099849 ((BL)).

The claims are drawn to a composition comprising ascorbyl 2 phosphate or a sodium or potassium salt thereof. The composition optionally includes one or more of an anticaries agent, tartar control agent, antimicrobial agent and a desensitizing agent and further comprising a polymer.

Lion Corp. teach oral compositions comprising ascorbic acid phosphate in dental cream, mouthwash, liquid, paste and chewing gum with other additives such as polishing agents, binders, thickening agents, and antiseptics (antimicrobials).

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lion Corporation WO 2002 02124 A1 (BS).

The claims are drawn to a composition comprising ascorbyl 2 phosphate or a sodium or potassium salt thereof and further comprising calcium ions wherein the composition is mixed with saliva.

Lion Corporation teach compositions containing ascorbic acid phosphoric acid esters or its salts comprising a surfactant, one or more sugar alcohols and a calcium and aluminum ion source. It appears to be an oral composition based on figures (A), (B) and (C) on page 1 of the document, so it appears that it would be mixed with saliva.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna A. Jagoe whose telephone number is (703) 306-5826. The examiner can normally be reached on 8:00 A.M. - 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3230 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

dj

December 15, 2002



RAYMOND HENLEY, III  
PRIMARY EXAMINER  
GROUP 1000